

JOHNSTON AND FORSYTH

ATTORNEYS AND COUNSELORS AT LAW
GREENSBORO, NORTH CAROLINA

MAILING ADDRESS
P. O. BOX 9031
GREENSBORO
NORTH CAROLINA 27408

CABLE ADDRESS
JOHNLEX

OFFICES
1324 CAROLINA STREET
TELEPHONE
(919) 275-0526

W. EUGENE JOHNSTON, III
ALYCE S. FORSYTH

February 25, 1977

RECORDATION NO. 8735

MAR 2 1977 - 9 20 AM

Office of the Secretary
Interstate Commerce Commission
Washington, D. C.

INTERSTATE COMMERCE COMMISSION

RE: Security Agreement Between Lawrence E. McCullough
and First National Bank in Dallas

Dear Sir:

We enclose for recording the original Security Agreement dated December 15, 1976 by and between Lawrence E. McCullough, a citizen resident of the State of Texas, and the First National Bank in Dallas, a national banking association located in Dallas, Texas. The address of Lawrence E. McCullough is 303 Valley View Bank Building, 13101 Preston Road, Dallas, Texas 75240 and the address of the First National Bank in Dallas is 1401 Elm Street, Dallas, Texas 75283. The collateral covered by the Security Agreement is real road freight cars specifically two Rigid Underframe 70 Ton XF Box Cars, Serial Numbers VC9192 and VC9193. Lawrence E. McCullough is not a common carrier by rail, motor or water. It is our understanding that there has been no prior recordation of any documents concerning the above-mentioned box cars.

We are also enclosing our check in the amount of \$50.00 to cover the fees to be collected by your office in connection with the recording of the Security Agreement.

Please return the original Security Agreement to us stamped with the date and time of recording and the recordation number.

Very truly yours,

JOHNSTON AND FORSYTH

W. Eugene Johnston, III

WEJ/af

Enclosures

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ICE Washington, D. C.

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I.C.C.

Interstate Commerce Commission
Washington, D.C. 20423

3/8/77

OFFICE OF THE SECRETARY

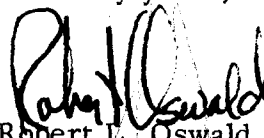
W. Eugene Johnston, III
Johnston & Forsyth
P.O.Box 9031
Greenboro, North Carolina 27408

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the
provisions of Section 20(c) of the Interstate Commerce Act,
49 U.S.C. 20(c), on 3/2/77 at 9:20am'
and assigned recordation number(s)

8735

Sincerely yours,


Robert L. Oswald
Secretary

Enclosure(s)

SE-30
(5/76)

SECURITY AGREEMENT

MAR 2 1977 -9 20 AM

INTERSTATE COMMERCE COMMISSION

THIS SECURITY AGREEMENT, made and entered into as of this 15th day of December, 1976, by and between LAWRENCE E. McCULLOUGH, of Dallas, Texas (herein called "Debtor"), and FIRST NATIONAL BANK IN DALLAS, a national banking association (herein called "Secured Party");

WITNESSETH:

WHEREAS, Secured Party has loaned Debtor the sum of \$40,000.00, which loan is evidenced by the Note of Debtor of even date herewith in the original principal amount of \$40,000.00 (herein called the "Note"); and

WHEREAS, Debtor has agreed and does hereby agree to secure all indebtedness evidenced by the Note, any and all renewals or extensions thereof, and any other present or future indebtedness of Debtor to Secured Party by railroad freight box cars owned by Debtor, which freight box cars were or shall be purchased by Debtor with the proceeds of a loan by Secured Party to Debtor;

NOW, THEREFORE, in consideration of the loan by Secured Party to Debtor of \$40,000.00 and the covenants, promises and conditions contained herein, it is agreed as follows:

SECTION 1. Grant of Security Interest. In order to secure the payment of the principal of and interest on the Note and any and all renewals or extensions thereof according to their tenor and effect, and the performance and observance of all other covenants and conditions contained in the Note, any renewal or extension thereof, this Security Agreement or any other instrument or document now or hereafter evidencing indebtedness of any nature of Debtor to Secured Party, Debtor does hereby convey, warrant, assign, and grant to Secured Party, a mortgage of, security interest in, and lien on the properties, rights, interests and privileges described in Sections 1.1 and 1.2 hereof (all of which properties hereby mortgaged, assigned and pledged or intended so to be are hereinafter collectively referred to as the "Collateral").

Section 1.1 Equipment Collateral. The Collateral includes two (2) fifty (50) foot seventy (70) Ton ~~Blad~~ Underframe Box Cars, Serial Numbers ~~VC9167~~ ^{VC9193} and ~~VC9168~~ ^{VC9192} (hereinafter referred to collectively as the "Equipment" and individually as an "Item of Equipment"), together with all replacements and substitutes for, improvements of, accessions, attachments, and other additions to the Equipment or an Item of Equipment.

Section 1.2 Other Collateral. The Collateral also includes all rights of Debtor arising under that certain Management Agreement

dated as of December 15, 1976 between Railvest, Inc. and Debtor (herein called the "Management Agreement") and the agreement dated as of December 15, 1976 between Debtor and Virginia Central Railway, Inc. providing for the lease of the Equipment (herein called the "Lease") and all service charges (as defined in the Lease) and other sums due and to become due thereunder, including any and all extensions or renewals thereof insofar as the same cover or relate to the Equipment; it being the intent and purpose hereof that the assignment and transfer to Secured Party of said service charges and other sums due and to become due under the Lease shall be effective and operative at such time as Secured Party shall give written notice to Virginia Central Railway, Inc. to make such payments to Secured Party and shall continue in full force and effect thereafter until Virginia Central Railway, Inc. shall have been notified in writing by Secured Party to begin making such payments to Debtor. Secured Party shall have the right to collect and receive said service charges and other sums for application in accordance with the provisions of Section 4 hereof at all times during the period from and after the date of this Security Agreement until the indebtedness hereby secured has been fully paid and discharged.

Section 1.3 Limitations to Security Interest. The security interest granted by this Section 1 is subject only to the lien for current taxes, if any, not in default, or, if delinquent, the validity of which is being contested in good faith.

Section 1.4 Duration of Security Interest. Secured Party shall have and hold the security interest granted hereby in the Collateral forever; provided always, however, that such security interest is granted upon the express condition that if Debtor shall pay or cause to be paid all the indebtedness hereby secured and shall observe, keep and perform all the terms and conditions, covenants and agreements contained herein and in the Note, any and all renewals or extensions thereof, and in any other instrument or document now or hereafter evidencing indebtedness of Debtor to Secured Party, then these presents and the estate hereby granted and conveyed shall cease and this Security Agreement shall become null and void; otherwise to remain in full force and effect.

SECTION 2. Covenants and Warranties. Debtor covenants, warrants and agrees as follows:

Section 2.1 Debtor's Duties. Debtor covenants and agrees well and truly to perform, abide by and to be governed and restricted by each and all of the terms, provisions, restrictions, covenants and agreement set forth in this Security Agreement, the Note, and in each and every supplement thereto, or renewal, extension, or amendment thereof which may at any time or from time to time be executed and delivered by the parties hereto or their successors and assigns, to the same extent as though each and all of said terms, provisions, restrictions, covenants and agreements were fully set out herein.

Section 2.2 Warranty of Title. Debtor hereby represents and warrants to Secured Party that Debtor has the right, power and authority to grant a security interest in the Collateral to Secured Party for the uses and purposes herein set forth, and that Debtor is the owner of the Equipment, free and clear of all liens and encumbrances. Debtor will warrant and defend the title to the Collateral against all claims and demands of all persons whatsoever.

Section 2.3. Further Assurances. Debtor will, at his own expense, do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or proper for the perfection of the security interest herein provided for in the Collateral, whether now owned or hereafter acquired. Without limiting the foregoing but in furtherance of the security interest herein granted in the service charges and other sums due and to become due under the Lease, Debtor covenants and agrees that he will notify Railvest, Inc. and Virginia Central Railway, Inc. of the assignment of Lease herein contained and direct the Lessee to make all payments of such service charges and other sums due and to become due under the Lease directly to Secured Party or as Secured Party may direct upon receipt of written instructions to that effect from Secured Party.

Section 2.4. Casualty. In the event that any Item of

Equipment shall be or become worn out, lost, stolen, destroyed or irreparably damaged from any cause whatsoever during the continuance of this Agreement, Debtor shall replace the Item of Equipment at his own cost or cause the Item of Equipment to be replaced with other operable standard gauge rolling stock equal in value to the depreciated value (as determined by applicable standards of the Association of American Railroads) and of substantially as good material and construction as that worn out, lost, stolen, destroyed or irreparably damaged, and shall give Secured Party an opinion of counsel acceptable to Secured Party to the effect that this Agreement constitutes a first lien on such replacement Item of Equipment, and shall execute and deliver such further documents as may be requested by Secured Party in support of such opinion, or Debtor shall promptly pay to the Secured Party a sum equal to 50% of the balance due under the Note, together with interest accrued thereon to date of such payment at the rate set forth in the Note, in which event all succeeding payments under the Note shall be correspondingly reduced.

Section 2.5 Maintenance. Debtor will at all times cause the Equipment to be maintained in good order and repair and to that end will ensure that Virginia Central Railway, Inc. performs all of its obligations under Paragraph 6 of the Lease with respect to repair and maintenance of the Equipment.

Section 2.6 Insurance. Debtor will provide the insurance

on the Equipment as described in Paragraph 15 of the Lease and name Secured Party as mortgagee on any policy covering occurrences described in Section 2.4 hereof which are insured against, and Debtor shall furnish Secured Party with copies of such insurance policies and pay all premiums which may become due with respect to such policies. All insurers and coverages under such policies must be satisfactory to Secured Party.

Section 2.7. Compliance. Debtor will comply, and will cause any lessee of the Equipment to comply, in all respects with all laws of the jurisdictions in which the Equipment may be operated, with all standards recommended by the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment to the extent that such laws and rules affect the operation or use of the Equipment. In the event that such laws or rules require the alteration of the Equipment or any part thereof, Debtor will conform therewith, at his expense, and will maintain the same in proper condition for operation under such laws and rules; provided, however, that Debtor may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Secured Party, adversely affect the property or rights of Secured Party hereunder. Debtor will not agree to any modification or amendment of either the Lease or the Management Agreement without the prior written consent of Secured Party.

Section 2.8. Power of Attorney in Respect of the Lease.

Debtor does hereby irrevocably constitute and appoint Secured Party his true and lawful attorney with full power of substitution for him and in his name, place and stead, to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all service charges, income and other sums which are assigned under Section 1.1 and Section 1.2 hereof with full power to settle, adjust or compromise any claim thereunder as fully as Debtor could himself do, and to endorse the name of Debtor on all commercial paper given in payment or in part payment thereof, and in its discretion to file any claim or take any other action or proceedings, either in its own name or in the name of Debtor or otherwise, which Secured Party may deem necessary or appropriate to protect and preserve the right, title and interest of Secured Party in and to such service charges and other sums and the security intended to be afforded hereby. This power of attorney shall not terminate on the disability of Debtor, who is the grantor hereof.

SECTION 3. Possession and Use of Property.

Section 3.1. Possession of Collateral. While Debtor is not in default hereunder, he shall be suffered and permitted to remain in full possession, enjoyment and control of the Equipment

and to manage, operate and use the same and each part thereof with the rights and franchises appertaining thereto; provided, always, that the possession, enjoyment, control and use of the Equipment shall at all times be subject to the observance and performance of the terms of this Security Agreement, and that Debtor shall never make any written designation for special use as described in Paragraph 11.C. of the Lease. It is expressly understood that the use and possession of the Equipment by the Lessee under, subject to, and in compliance with the Lease shall not constitute a violation of this Section 3.1.

SECTION 4. Defaults and Other Provisions.

Section 4.1 Events of Default. The term "event of default" for all purposes of this Security Agreement shall mean one or more of the following:

(a) Default in payment of an installment of the principal of or interest on the Note, or under any other instrument or document now or hereafter evidencing any indebtedness of Debtor to Secured Party, when and as the same shall become due and payable, whether at the due date thereof or at the date fixed for prepayment, by acceleration or otherwise, and any such default shall continue unremedied for three (3) consecutive calendar days; or

(b) Default on the part of Debtor in the due observance or performance of any covenant or agreement to be observed or performed by it under this Security Agreement and such default shall continue unremedied for thirty (30) consecutive calendar days; or

(c) Any representation or warranty made herein or in the Note or in any report, certificate, financial or other

statement furnished in connection with this Security Agreement, the Lease, or the Note, or the transactions contemplated thereby shall prove to be false or misleading in any material respect; or

(d) Any claim, lien or charge (other than the Lease and liens, charges and encumbrances which the Lessee is obligated to discharge under the Lease) shall be asserted against or levied or imposed upon the Equipment, in whole or in part, and such claim, lien or charge shall not be discharged or removed within thirty (30) calendar days after the written notice from Secured Party to Debtor and the Lessee demanding the discharge or removal thereof.

Section 4.2 Secured Party's Rights. Debtor agrees that when any "event of default" as defined in Section 4.1 hereof has occurred and is continuing, Secured Party shall have the rights, options, duties and remedies of a secured party, and the Debtor shall have the rights and duties of a debtor, under the Uniform Commercial Code as from time to time in effect in the State of Texas (regardless of whether such Code or a law similar thereto has been enacted in a jurisdiction wherein the rights of remedies are asserted) and without limiting the foregoing, Secured Party may exercise any one or more or all, and in any order, of the remedies hereinafter set forth, it being expressly understood that no remedy herein conferred is intended to be exclusive of any other remedy or remedies; but each and every remedy shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at law or in equity or by statute.

(a) Secured party may, by notice in writing to Debtor, declare the entire unpaid balance of the Note and any other indebtedness of Debtor to Secured Party then outstanding and unpaid to be immediately due and payable; and thereupon

all such unpaid balance, together with all accrued interest therein, shall be and become immediately due and payable.

(b) Secured Party personally or by agents or attorneys, shall have the right to take immediate possession of the Collateral, or any portion thereof, and for that purpose may pursue the same wherever it may be found, and may enter any of the premises of Debtor, with or without notice, demand, process of law or legal procedure, and search for, take possession of, remove, keep and store the same, or use and operate or lease the same until sold.

(c) Secured Party may, either with or without taking possession and either before or after taking possession, and without instituting any legal proceedings whatsoever, and having first given notice of such sale by registered mail to Debtor once at least ten (10) days prior to the date of such sale, and any other notice which may be required by law, sell and dispose of the Collateral, or any part thereof, at public auction to the highest bidder, in one lot as an entirety or in separate lots, and either for cash or on credit and on such terms as Secured Party may determine, and at any place (whether or not it be the location of the Collateral or any part thereof) designated in the notice above referred to. Any such sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales, or for any such adjourned sale or sales, without further published notice, and Secured Party may bid and become the purchaser at any such sale;

(d) Secured Party may proceed to protect and enforce this Security Agreement and the Note by suit or suits or proceedings in equity, at law or in bankruptcy, and whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted; or for foreclosure hereunder, or for the appointment of a receiver or receivers for the Collateral or any part thereof, or for the recovery of judgment for the indebtedness hereby secured or for the enforcement of any other proper legal or equitable remedy available under applicable law;

(e) Secured Party may, at its option, proceed to exercise all rights, privileges, and remedies of Debtor under the Lease or the Management Agreement, and may exercise all such rights and remedies either in the name of Secured Party or in the name of Debtor for the use and benefit of Secured Party.

Section 4.3. Waiver by Debtor. Debtor covenants that he will not at any time insist upon or plead, or in any manner whatsoever claim or take any benefit or advantage of, any stay or extension law now or at any time hereafter in force, nor claim, take, nor insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Collateral or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree, judgment or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof, and hereby expressly waives all benefit and advantage of any such law or laws, and covenants that he will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to Secured Party, but will suffer and permit the execution of every such power as though no such power, law or laws had been made or enacted.

Section 4.4. Effect of Sale. Any sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of Debtor in and to the property sold, shall be a perpetual bar, both at law and

in equity, against Debtor and against any and all persons claiming the property sold or any part thereof under, by or through Debtor.

Section 4.5. Application of Sale Proceeds. The purchase money proceeds and avails of any sale of the Collateral, or any part thereof, and the proceeds and the avails of any remedy hereunder shall be paid to and applied in the following order:

First, to the payment of costs and expenses of foreclosure or suit, if any, and of such sale, and of all proper expenses, liability and advances, including legal expenses and attorneys' fees, incurred or made hereunder by Secured Party, and of all taxes, assessments or liens superior to the lien or these presents, except any taxes, assessments or other superior lien subject to which said sale may have been made;

Second, to the payment of the amount then owing or unpaid on the Note or other indebtedness to Secured Party for interest;

Third, to the payment of the amount then owing or unpaid on the Note or other indebtedness to Secured Party for principal;

Fourth, to the payment of the surplus, if any, to Debtor or to whomsoever may be lawfully entitled to receive the same.

Section 4.6. Discontinuance of Remedies. In case Secured Party shall have proceeded to enforce any right under this Security Agreement by foreclosure, sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely, then and in every such

case Debtor and Secured Party shall be restored to their former positions and rights hereunder with respect to the property subject to the security interest created under this Security Agreement.

Section 4.7. Cumulative Remedies. No delay or omission of Secured Party to exercise any right or power arising from any default on the part of Debtor, shall exhaust or impair any such right or power or prevent its exercise during the continuance of such default. No waiver by Secured Party of any such default, whether such waiver be full or partial, shall extend to or be taken to affect any subsequent default, or to impair the rights resulting therefrom except as may be otherwise provided herein. No remedy hereunder is intended to be exclusive of any other remedy but each and every remedy shall be cumulative and in addition to any and every other remedy given hereunder or otherwise existing; nor shall the giving, taking or enforcement of any other or additional security, collateral or guaranty for the payment of the indebtedness secured under this Security Agreement operate to prejudice, waive or affect the security of this Security Agreement or any rights, powers or remedies hereunder, nor shall Secured Party be required to first look to, enforce or exhaust such other or additional security, collateral or guaranties.

SECTION 5. Miscellaneous.

Section 5.1 Successors and Assigns. Whenever any of the parties hereto is referred to such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Security Agreement contained by or on behalf of either Debtor or Secured Party, shall bind and inure to the benefit of the respective successors and assigns of such parties whether so expressed or not.

Section 5.2. Partial Invalidity. The unenforceability or invalidity of any provision or provisions of this Security Agreement shall not render any other provision or provisions herein contained unenforceable or invalid.

Section 5.3. Communications. All communications provided for herein shall be in writing and shall be deemed to have been given (unless otherwise required by the specific provisions hereof in respect of any matter) when delivered personally or when deposited in the United States mail, registered, postage prepaid, addressed as follows:

If to Debtor:	Lawrence E. McCullough 303 Valley View Bank Building 13101 Preston Road Dallas, Texas 75240
If to Secured Party:	First National Bank in Dallas 1401 Elm Street Dallas, Texas 75283 Attention: Andy Noel, Assistant Vice President

or as to Debtor or Secured Party at such other address as Debtor or Secured Party may designate by notice duly given in accordance with this Section to the other party.

Section 5.4. Release. Secured Party shall release this Security Agreement and the security interest granted hereby by proper instrument or instruments upon presentation of satisfactory evidence that all indebtedness secured hereby has been fully paid or discharged. All costs in connection with any such release shall be borne by Debtor.

Section 5.5. Obligations of Debtor. The assignment made hereby of the Lease and Management Agreement is an assignment as collateral security, and the execution and delivery hereof shall not in any way impair or diminish the obligation of Debtor under the Lease and the Management Agreement nor shall any of the obligations contained in the Lease and Management Agreement be imposed upon the Secured Party as the result of the execution of this Security Agreement.

Section 5.6 Counterparts. This Security Agreement may be executed, acknowledged and delivered in any number of counterparts, each of such counterparts constituting an original but all together only one Security Agreement.

Section 5.7 Headings. Any headings or captions preceding the text of the several sections hereof are intended solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

Section 5.8 Governing Law. This Security Agreement, the Note and all renewals or extensions thereof shall be construed in accordance with and governed by the laws of the State of Texas; provided, however, that Secured Party shall be entitled to all rights conferred by any applicable federal statute, rule, or regulation.

Section 5.9 Effective Date. This Security Agreement is dated as of December 15, 1976 for convenience of identification and has been executed by Debtor on the date shown in the acknowledgement attached hereto, but is delivered by Debtor to Secured Party and becomes effective on the date of purchase of the Equipment by Debtor and the advancement of funds by Secured Party for the Equipment.

IN WITNESS WHEREOF, Debtor and Secured Party have caused this Security Agreement to be executed, all as of the day and

year first above written.

Lawrence E. McCullough
Lawrence E. McCullough

FIRST NATIONAL BANK IN DALLAS

(Seal)

ATTEST:

By: M. Andrew Noel
asst-V.P.

Judy Wardell
Assistant Cashier

STATE OF TEXAS)

COUNTY OF)

This 15 day of February, 1977, before me personally appeared Lawrence E. McCullough, to me known to be the person described in and who executed the foregoing instrument and he acknowledged that he executed the same as his free act and deed.

Virginia Hester
Notary Public

My Commission Expires: _____

VIRGINIA HESTER, Notary Public
in and for the State of Texas
My commission expires June 1, 1977

STATE OF TEXAS)

COUNTY OF)

This 15 day of February, 1977, before me personally appeared M. A. Noel, to me personally known, who, being by me duly sworn, says that he is Assistant Vice-President of FIRST NATIONAL BANK IN DALLAS, and that the seal affixed to the foregoing instrument is the corporate seal of said Association, and that said instrument was signed and sealed on behalf of said Association by authority duly given, and the said M. A. Noel acknowledged that the execution of the foregoing instrument was the free act and deed of said Association.

WITNESS my hand and notarial seal.

Virginia Hester
Notary Public

My Commission Expires: _____

VIRGINIA HESTER, Notary Public
in and for the State of Texas
My commission expires June 1, 1977